

Montgomery County Code

Chapter 11B. Contracts and Procurement.

Sec. 11B-33C. Prevailing Wage Requirements — Construction Contracts.

- (a) *Definitions.* In this Section, the following words have the meanings indicated:

Apprentice means an individual who:

- (1) is at least 16 years old;
- (2) has signed an agreement with an employer or employer's agent, an association of employers, an organization of employees, or a joint committee, that includes a statement of:
 - (A) the trade, craft, or occupation that the individual is learning; and
 - (B) the beginning and ending dates of the apprenticeship; and
- (3) is registered in a program of a Council or Bureau of Apprenticeship and Training of the United States Department of Labor.

Construction means work defined in Section [11B-1\(c\)](#).

County financed construction contract means a contract for construction work that is awarded by the County or where County funds are used to finance all or part of the cost of the contract.

County funds means any:

- (1) funds directly appropriated by the County; or
- (2) grant funding for construction under Section [20-75](#) that cumulatively exceeds \$500,000.

Employee means a laborer, apprentice, journeyman, or mechanic employed by a contractor or subcontractor on a County financed construction contract.

Prevailing wage means the hourly wage rate set by the State Commissioner of Labor and Industry for State-funded construction contracts in the County.

- (b) *Exclusions.* This Section does not apply to a County financed construction contract:

- (1) of less than \$500,000;
- (2) that is subject to a Federal or State prevailing wage law;
- (3) awarded without competition under Section [11B-14](#);
- (4) with a public entity;
- (5) to the extent that the contractor is expressly precluded from complying with this Section by the terms of any Federal or State law, contract, or grant;
- (6) entered into as a bridge contract under Section [11B-42](#);

(7) entered into as a cooperative procurement under Section [11B-40](#); or

(8) which results from an emergency procurement under Section [11B-16](#).

(c) *Payment of prevailing wage.* Any contractor and subcontractor that performs direct and measurable construction work on a County financed construction contract must pay each employee at a rate equal to or more than the prevailing wage currently in effect for the type of work performed.

(d) *Prevailing wage.*

(1) *Basic rate.* The prevailing wage rate is the prevailing wage rate established annually by the Commissioner of Labor and Industry for State financed construction work performed in the County by an employee who performs direct and measurable work.

(2) *Overtime rate.* A contractor or subcontractor must pay an employee at a rate equal to or more than the prevailing wage rate for overtime for the type of work performed for each hour that the employee performs direct and measurable work:

(A) more than 10 hours in any single calendar day;

(B) more than 40 hours in a workweek; or

(C) on a Sunday or a legal holiday.

(3) *Deductions.* A contractor or subcontractor may only make fair and reasonable deductions that are:

(A) required by law;

(B) authorized in a written agreement between an employee and an employer signed at the beginning of employment that:

(i) concerns food, sleeping quarters, or similar items;

(ii) is submitted by the employer to the Chief Administrative Officer or a designee; or

(C) required or allowed by a collective bargaining agreement between a bona fide labor organization and a contractor or subcontractor.

(4) *Apprentices.* Each apprentice must be paid at least the rate that the State's Apprenticeship and Training Council sets for an apprentice in the trade involved, based on a percentage of the prevailing wage rate in that trade.

(d) *Contract requirements.* Each contract covered by this Section must:

(1) require the contractor and subcontractor to comply with this Section; and

(2) specify that an aggrieved employee, as a third-party beneficiary, may by civil action recover the difference between the prevailing wage for the type of work performed and the amount actually received, with interest and a reasonable attorney's fee.

(e) *Misclassification of employees.*

(1) A contractor or subcontractor must not split or subdivide a contract, pay an employee through a third party, or treat an employee as a subcontractor or independent contractor to avoid any requirement of this Section.

(2) A laborer may perform any work that is not ordinarily performed by a mechanic or mechanic's apprentice, but must be paid the prevailing wage rate for the work performed.

(3) A laborer receiving the prevailing wage rate for laborers must not perform work ordinarily performed by a mechanic or mechanic's helper.

(4) If a laborer performs work ordinarily performed by any mechanic or mechanic's apprentice, the laborer must be paid for the entire time of performance of that work at the prevailing wage rate for a mechanic.

(f) *Helper and trainee restrictions.* A contractor or subcontractor must not employ any individual classified as a helper or trainee to perform direct and measurable work on a contract covered by this Section.

(g) *Posting requirements.* Each contractor and subcontractor must post a clearly legible statement of each prevailing wage rate in a prominent and easily accessible place at the work site during the entire time work is being performed in English and any other language that is primarily spoken by the employees at the work site.

(h) *Payroll records.*

(1) Each contractor and subcontractor must submit a complete copy of its payroll records for construction work performed on a contract covered by this Section to the Chief Administrative Officer or a designee within 14 days after the end of each payroll period.

(2) The payroll records must contain a statement signed by the contractor or subcontractor certifying that:

- (A) the payroll records are correct;
- (B) the wage rates paid are not less than those required by this Section; and
- (C) the rate of pay and classification for each employee accurately reflects the work the employee performed.

(3) Each payroll record must include:

- (A) the name, address, and telephone number of the contractor or subcontractor;
- (B) the name and location of the job; and
- (C) each employee's:

- (i) name;
- (ii) current address, unless previously reported;
- (iii) specific work classification;
- (iv) daily straight time and overtime hours;
- (v) total straight time and overtime hours for the payroll period;
- (vi) rate of pay;
- (vii) fringe benefits by type and amount; and
- (viii) gross wages.

(4) Each contractor or subcontractor must:

(A) keep payroll records covering construction work performed on a contract covered by this Section for not less than 5 years after the work is completed; and

(B) subject to reasonable notice, permit the Chief Administrative Officer or a designee to inspect the payroll records at any reasonable time and as often as necessary.

(5) The Chief Administrative Officer or a designee must make payroll records obtained from contractors or subcontractors under this Section available for public inspection during regular business hours for 5 years after the Chief Administrative Officer receives the records.

(i) *Enforcement.*

(1) The Chief Administrative Officer or a designee may perform random or regular audits and investigate any complaint of a violation of this Section. If the Director determines that a provision of this Section has been violated, the Director must issue a written decision, including appropriate sanctions, and may withhold from payment due the contractor, pending a final decision, an amount sufficient to:

(i) pay each employee of the contractor or subcontractor the full amount of wages due under this Section; and

(ii) satisfy a liability of a contractor for liquidated damages as provide in this Section.

(2) A contractor or subcontractor must not discharge or otherwise retaliate against an employee for asserting any right under this Section or for filing a complaint of a violation.

(3) The sanctions of Section [11B-33\(b\)](#) which apply to noncompliance with nondiscrimination requirements apply with equal force and scope to noncompliance with this Section.

(4) Each contract subject to this Section may specify the payment of liquidated damages to the County by the contractor for any noncompliance with this Section.

(5) Each contractor is jointly and severally liable for noncompliance with this Section by a subcontractor.

(6) If a contractor or subcontractor is late in submitting copies of any payroll record required to be submitted under this Section, the County may deem invoices unacceptable until the contractor or subcontractor provides the required records, and may postpone processing payments due under the contract or under an agreement to finance the contract.

(7) A contractor may appeal a written decision of the Director that the contractor violated a provision of this Section to the Chief Administrative Officer within 10 working days after receiving a copy of the decision. The Chief Administrative Officer must designate a hearing officer to conduct a hearing under [Chapter 2A](#) upon receipt of a timely appeal. If the contractor does not appeal a written decision within 10 working days after receipt, the decision of the Director becomes final and binding.

(j) *Report.* The Chief Administrative Officer must report annually to the Council and Executive on the operation of and compliance with this Section. ([2008 L.M.C., ch. 31](#), § 1.)